

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DENNIS ALLEN, MARY JANE
CRACRAFT, LELAN LITTRELL and
GLASS, MOLDERS, POTTERY, PLASTIC
AND ALLIED INDUSTRIAL WORKERS,
LOCAL NO. 41, AFL-CIO,

Plaintiffs,

vs.

LEONARD D. KRISTAL, and JOHN L.
CRARY,

Defendants.

JOHN L. CRARY,

Cross-Claimant,

vs.

LEONARD D. KRISTAL,

Cross-Defendant.

JOHN L. CRARY,

Third-Party Plaintiff,

vs.

POLLY JONES, SHIRLEY MONROE,
JAMES THELAN,

Third-Party Defendants

Case No: C-1-01-159

Judge Herman J. Weber
Magistrate Judge Timothy S. Hogan

MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
EXTENSION OF TIME TO RESPOND TO
DEFENDANT CRARY'S MOTION TO
REVIEW

DISCUSSION

The Magistrate Judge issued his Report and Recommendation on October 22, 2004. (Doc. 127) Defendant Crary filed a timely Motion to Review on November 1, 2004. (Doc. 128) Plaintiffs now request an extension of time in which to respond. Their motion should be denied for the following reasons.

1. Plaintiffs' motion violates Local Rule 7.3(a), which requires counsel to "consult with all parties . . . whose interests might be affected by the granting of such relief and solicit their consent to the extension. The motion shall affirmatively state that such consultation has occurred or was attempted in good faith, and shall state whether the motion is unopposed." An examination of Plaintiffs' motion will indicate that it failed to follow this rule.

2. Plaintiffs' motion should also be denied because it fails to set forth anything resembling good cause for delaying these proceedings still further. It does not elaborate on the "press of business" which allegedly prevents it from complying with the rules. It does not identify the Sixth Circuit brief it says is due, or the person responsible for preparing that brief. Its motion therefore lacks sufficient cause and should be denied.

3. Finally, Plaintiffs have been guilty of a pattern of untimeliness throughout this litigation. As the Magistrate Judge stated on the final page of his Report and Recommendation concerning the lateness of Plaintiffs' Cross-Motion for Summary Judgment (doc. 74):

Plaintiffs offer no excuse so [for?] such a dilatory filing and are apparently under the impression either that the best defense is a good offense or that time limits for dispositive motions only apply to defendants. Having concluded that there is a sufficient factual basis for Defendant Crary to stand trial, one would have to conclude that there are

1 certainly material issues of fact with reference to Plaintiff's claims against
2 Crary. *Were it not for this fact, Plaintiff's Motion for Summary Judgment*
3 *would be stricken as untimely filed.*

(Emphasis added.)

4 Any of the above reasons would be sufficient for refusing the requested extension
5 of time. Together they are more than sufficient.

6 **CONCLUSION**

7 For the foregoing reasons, Plaintiff's Motion for Extension of Time should be
8 denied.
9

10 Respectfully Submitted,

11 /s/ Stephen R. Felson

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CERTIFICATION OF SERVICE

I hereby certify that on November 12, 2004, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following.

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